MINUTES OF THE
CAPITAL PROJECTS AND BOND
OVERSIGHT COMMITTEE

July 21, 1998

The Capital Projects and Bond Oversight Committee met on Tuesday, July 21, 1998, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Robert Damron, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Robert Damron, Chairman; Senator Robert Leeper, Vice Chairman; Senator Tom Buford; and Representative Drew Graham.

Guests: Allen Holt, Governor's Office for Policy and Management; Commissioner Armond Russ and Jim Abbott, Department for Facilities Management; Marilyn Eaton-Thomas and Sandy Williams, Kentucky Infrastructure Authority; Tom Howard, Kim Link, and Paul Ruby, Office of Financial Management and Economic Analysis; Sherron Jackson, Council on Postsecondary Education; Paul Isaacs, Nick Schwendeman, Debra Wash, and Leesa Haydon, Administrative Office of the Courts; Kevin Mason, Department of Education; Mary Allen and George DeBin, University of Kentucky; Deputy Commissioner Tom Campbell and Mark Coleman, Department of Corrections; Everrett Hoffman, ACLU of Kentucky; Jim Carloss and John Cooper, Corrections Corporation of America; Kim Burch, Sharon Cantrell, Karen Crabtree, Norman Lawson, Dan Risch, and Charles Shirley, LRC.

LRC Staff: Mary Lynn Collins, Pat Ingram, Lou Pierce, Jack Affeldt, and Shawn Bowen.

Press: Susan Hernandez, Lexington Herald-Leader; Tony McVeigh, Kentucky News Network; and Mark Chellgren, Associated Press.

Administration Cabinet, the University of Kentucky, and the University of Louisville; and a letter from the Council on Postsecondary Education approving two unbudgeted projects the Committee approved in May for Owensboro Community College.

Chairman Damron then called on Mr. Paul Isaacs, Director, Administrative Office of the Courts (AOC), and Mr. Nick Schwendeman, General Manager for Facilities, AOC, to discuss two court projects.

Mr. Isaacs noted that the 1998 General Assembly created and funded the Court Facility Use Allowance Contingency Fund to cover cost overruns on authorized court projects. The budget language establishing the Fund limits a cost overrun to 15% of the authorized scope and requires a report to the Capital Projects and Bond Oversight Committee whenever moneys in the contingency fund are allocated.

Mr. Isaacs said the Court Facilities Standards Committee recently approved scope increases for court projects in Mason and Barren Counties, projects originally funded in the 1996 regular Session as part of a project pool. He said the Court Facility Use Allowance Contingency Fund will be used to fund 15% cost overruns on authorized annual use allowances for the Mason County Courthouse project and for the Barren County Courthouse project. Mr. Isaacs explained that the scope increases are necessary because of increased space requirements based on the National Center for State Courts' review. He said the Mason County Courthouse will increase from 12,800 sq. ft. to 17,300 sq. ft., and the Barren County Courthouse will increase from 11,100 sq. ft. to 17,000 sq. ft.

Mr. Isaacs noted that during the 1998 General Assembly Session, additional funds were requested for the Mason County project and the project scope increased to $4,531,700, and $131,000 from AOC's continuation budget was directed to be used for the project's annual use allowance. (As most recently approved by the Court Facilities Standard Committee, the authorized maximum annual use allowance is $344,400.)

In response to a question from Chairman Damron, Mr. Isaacs said the current project budget, with the contingency fund allocation, should be sufficient to complete the Mason County Courthouse project.

complete and demolition has begun. (The authorized maximum annual use allowance for the project is $215,204.) Chairman Damron praised AOC for its efforts to keep the Barren County project on track. Mr. Isaacs said the project is certainly needed. He also called to the Committee's attention the quarterly status reports on all authorized projects.

Chairman Damron said the two court projects and the quarterly status report did not require Committee action.

Chairman Damron discussed House Bill 462 (1998 Session), which passed the House but failed to get out of the Senate Appropriations and Revenue Committee. That bill would have more clearly defined an oversight process for court projects. Chairman Damron said he believed that bill needed to be resurrected for the next Session. Mr. Isaacs said he wholeheartedly agreed and indicated he would begin working with the Committee's staff to consider any changes that need to be made in House Bill 462.

Next, Mr. Tom Campbell, Deputy Commissioner for the Department of Corrections, Commissioner Armond Russ, Department for Facilities Management, and Mr. Mark Coleman, Branch Manager, Department of Corrections, discussed three projects for the Department of Corrections. The projects include a 50-bed super-maximum security unit at the Kentucky State Penitentiary in Eddyville; a 150-bed transition dorm at the Kentucky State Reformatory in LaGrange; and a 50-bed minimum security unit at Green River Correctional Complex in Central City. Deputy Commissioner Campbell said during the Spring of this year, the department became aware of the availability of federal funding through the Violent Offender Incarceration Program that would fund the three projects.

Deputy Commissioner Campbell first discussed the 50-bed minimum security unit at the Green River Correctional Complex. He said the plan is to construct a 50-bed minimum security unit, thereby freeing up the more expensive beds for the medium security inmates. He explained that minimum security inmates are normally housed together in a separate unit outside the institution, but there is not enough minimum security housing, and 10-15 of the medium security beds in the institution are used by minimum security inmates.

Chairman Damron asked what effect the 50 bed minimum security unit will have that question, but he would find out. Chairman Damron commented that a lot of counties are building jails and are counting on the overflow of inmates from state institutions for operating income.

Chairman Damron said the Green River Correctional project is below the capital construction threshold of $400,000 and does not require Committee action.

Next, Deputy Commissioner Campbell discussed the 150-bed transition dorm at the Kentucky State Reformatory in LaGrange. He said the dormitory will be a multipurpose facility, and will house inmates temporarily transferred to the Reformatory to receive medical treatment and follow-up care; inmates awaiting transfer to another facility or placement in the bootcamp; and inmates assigned to maintain the grounds and participate in community work details. He added that some of the inmates transferred to the Reformatory come from minimum security institutions, and while staying at the Reformatory, they tie up medium security beds if minimum security beds are not available.

In response to a question from Chairman Damron, Deputy Commissioner Campbell said construction of the 150-bed transition dorm is necessary because of requirements in the Governor's Crime Bill passed during the last Session.

Chairman Damron asked why this project was not part of the agency's budget request. Deputy Commissioner Campbell said this project was not listed because Corrections hadn't thought about it until the federal money became available.

In response to another question from Chairman Damron, Deputy Commissioner Campbell said the new facility will cost approximately $6,000 per bed. Deputy Commissioner Campbell said operating costs were not included in the enacted budget, but the department estimates operating costs per inmate will be approximately $40 per day, which is close to the average cost per day for a medium custody inmate.

Chairman Damron asked what the state pays counties to house overflow inmates from the facility. Deputy Commissioner Campbell responded that the state pays about $26 per day. Chairman Damron noted that it costs $14 less per day for the state to use local jails instead of its own facilities.

Senator Buford made a motion to approve the 150-bed transition dorm at the Kentucky State Reformatory. The motion was seconded by Senator Leeper and passed by voice vote.

The last project Deputy Commissioner Campbell discussed was the 50-bed super-max unit at the Kentucky State Penitentiary in Eddyville. He said over the last few years, there has been an increase in violent and disruptive inmates at the penitentiary. The most disruptive inmates are currently housed in Cellhouse #3. Current facilities are inadequate for the inmates, and improvements are cost prohibitive, considering the age and design of the facility.

Deputy Commissioner Campbell said the proposed 50-bed super-max unit will house the state's most disruptive and violent inmates. The unit will be designed to house inmates in either eight or ten-man walks which are very controllable and supervisable, unlike the large walks they currently have. He said the units will be more self-contained, and as many services as possible will be brought to the unit, to cut down on the number of times an inmate has to be removed from his cell.

Chairman Damron introduced Mr. Everrett Hoffman, American Civil Liberties Union, who requested to speak on the issue of super-max units. Mr. Hoffman began by asking Committee members to disapprove the expenditure of funds for this project until the full General Assembly has an opportunity to consider the proposed change in Kentucky's correctional policy associated with the proposed project.

Mr. Hoffman said the concept of super-max units is a radical extension of the traditional use of solitary confinement. It uses modern technology to isolate and regulate the life of prisoners without permitting any human contact. He cited five main criticisms of super-max units: 1) there is a higher potential for physical abuse by prison guards; 2) inmates serve excessively long confinement periods; 3) there is a tendency to fill units to capacity, relaxing the initial criteria for incarceration which results in the confinement of inmates that do not represent a serious enough security risk to warrant isolation; 4) the sensory deprivation and social isolation suffered by mentally ill prisoners incarcerated in super-max units can aggravate their condition; and 5) there is a total lack of preparation given to prisoners who complete their sentences and are released.

continually disruptive. He added that the use of super-max units is not a radical departure from current practice. He said they have been forced to temporarily make a 20-man walk at the penitentiary for the most uncontrollable inmates. But he noted officers are still at a disadvantage because of the physical structure of the facility. They have to take the inmates to an area away from the unit or exercise on the walk where they have contact with other prisoners.

In response to questions from Senator Leeper, Deputy Commissioner Campbell acknowledged that the proposed unit will be staff intensive. At the same time, he said, when the cost of running the unit is factored into the overall cost of running the penitentiary, the operating cost will not represent a significant increase. Mr. Coleman said the estimated annual operational cost of the three projects is $4,064,000; the 150-bed transition dorm will cost $2,399,000; the 50-bed minimum security unit will cost $700,000; and the 50-bed super-max unit will cost $965,000.

Chairman Damron noted the state match for the federal funds is to come from telephone commissions and asked if this source of money would be affected by the Public Service Commission's (PSC) current review of the practice. Deputy Commissioner Campbell said the PSC held a hearing about two months ago regarding phone rates the department charges inmates receiving calls, but they are still waiting on a ruling. He said that if PSC rules against the state, the worst case scenario would be for PSC to cut rates by 50%. The funds, already collected and allocated for the state match, would not be affected.

Chairman Damron, referring to information gathered by staff, said super-max units operated in Illinois and South Carolina cost almost double what it costs to house an inmate in the general population. He questioned why the Department of Corrections estimates that it will cost only one-third more to house an inmate in the proposed super-max unit. Deputy Commissioner Campbell said although the unit itself will be more costly to operate, when the cost of running the unit is averaged into the overall operating cost of the facility, the increased cost will be insignificant. In response to another question from Chairman Damron, Deputy Commissioner Campbell said they estimate approximately one guard per inmate will be required for the super-max unit.

Chairman Damron asked why Corrections waited until the Session was over to

Chairman Damron said he contacted the chairs and staff of the Interim Joint Judiciary Committee and the Budget Review Subcommittee on Justice, Corrections, and Judiciary, and found neither committee was aware of this proposal. He said he has a real problem when an agency, 90 days after adjournment, makes a significant policy change such as this without giving the General Assembly the opportunity to review it.

Chairman Damron asked if the department failed to bring this issue before the Legislature because the use of super-max units is controversial. Deputy Commissioner Campbell said that was not the case, and explained that an incident occurred at the penitentiary in March of this year in which the inmates in Cellhouse #3 set a fire, and three employees were hurt. He said this intensified the department's interest in a super-max unit, and at the same time, they became aware of the federal grant.

Chairman Damron asked if all the funds involved just became available or have they been available for several years. Mr. Coleman said, to the best of his knowledge, they found out about the availability of federal funds in the Spring, and applied for them through the Justice Cabinet's Grant Management Division in early May. Chairman Damron said members of other legislative committees may want to review the proposal since it is a controversial issue and taxpayer money is involved. He asked if there is enough time for other committees to review the proposal if the project is not approved today. Mr. Coleman said because of construction timetables, he could not answer that question. He said the grant goes through June 30, 2001, and if construction is not completed by then, they run the risk of loosing federal dollars. Deputy Commissioner Campbell said it would take approximately 18 months to construct the super-max unit.

Senator Buford asked for more detail as to how the unit will be used. Deputy Commissioner Campbell said the only inmates housed in the super-max unit would be those that continually exhibit disruptive and aggressive behavior. Inmates housed in the super-max unit would be moved back into the general population when and if prison officials believe the inmate is no longer a danger to staff and other inmates.

Senator Leeper asked, from the inmate's point of view, what would be different about being housed in the super-max unit, rather than Cellhouse #3. Deputy Commissioner Campbell said the major differences would be: Cellhouse #3 inmates are allowed to mingle with the general prison population during exercise time; 2) Cellhouse

In response to another question from Senator Leeper, Deputy Commissioner Campbell said as far as daily operation of the super-max unit, inmate schedules will be similar to that of Cellhouse #3, but the unit will be more secure. He added there is an increasing need in the state for these kinds of facilities with the increase in prison gang activity.

Senator Leeper asked if any statutes or regulations will need to be changed. Deputy Commissioner Campbell responded that he did not see any need for statutory changes, but they would need to change their administrative regulations to reflect changes in policies and procedures. Senator Leeper asked if policy changes will be significantly different and Deputy Commissioner Campbell said they would not be.

Chairman Damron said he thought this project needed to be reviewed by the Judiciary Committee because it is a departure from the way prisoners in a certain class are treated and rehabilitated. He referred to a 60 Minutes newspiece that focused on a super-max facility in California, and said that community, as well as probation and parole staff, were concerned about behavioral patterns of inmates incarcerated in super-max facilities and then released from prison.

Chairman Damron said he was concerned that this project might be approved without the Interim Joint Committee on Appropriations and Revenue having a chance to discuss it. He said a vote to approve the project will commit the Legislature to $4 - $5 million more in annual operating costs. He also said the Interim Judiciary Committee needs to review the proposal since it involves a change in the department's policies. He observed that super-max units are new and their impact on society is unclear. Chairman Damron said there should be more opportunity for legislative discussion about this project if the General Assembly is going to be responsible for paying for it.

Senator Buford asked what would happen if the Department of Corrections does not receive approval from the Committee. Mr. Coleman said he did not know the timeline for the grant, but would check with the Justice Cabinet's Grant Division.

Senator Buford made a motion to approve the 50-bed super-max unit for the penitentiary. The motion was seconded by Representative Graham and passed by voice vote.

he was not necessarily opposed to a super-max unit, but he was opposed to Corrections waiting until the General Assembly adjourned to propose this project.

Senator Buford noted that approving the super-max facility was a tough decision when considering human rights, but the rights of the prison guards should also be considered. He said he hoped the ACLU will continue to keep in touch, monitor, and report back to the Committee. He said he understood both sides, and he understood the Chairman’s concern to protect the budget process and the integrity of what was established during the Session.

Next, Mr. Jim Abbott, Director, Division of Real Properties, presented two lease modification reports. The first lease modification report was for PR-3657, a lease of office space in Franklin County for the Department of Local Government. He said the lessor is Capital Center East, and the action taken is to amortize $7,445 (plus 8% interest) over the remaining term of the lease (June 30, 1999). The lease modification includes construction of four additional offices for the agency’s staff.

The second lease modification report was for PR-4070, a lease of office space in Franklin County for the Transportation Cabinet. He said the lessor is Teton Properties, and the action taken is to amortize $6,850 over the remaining term of the lease (June 30, 2000). The lease modification involves renovations to the facility to provide additional office space for new staff.

Chairman Damron said lease modifications of less than $50,000 must be reported to the Committee within 30 days, but do not require Committee action.

Next, Mr. Tom Howard, Office of Financial Management and Economic Analysis (OFMEA) discussed five follow-up reports for recently issued bonds. The first follow-up report was for the Kentucky Infrastructure Authority (KIA) Governmental Agencies Program (Fund C) Bond Anticipation Notes, 1998 Series A. He said the proceeds will be used to retire outstanding notes and provide capitalized interest if necessary, and to pay the cost of issuance. Gross proceeds are $7,300,000; the sale date was June 16 and the final maturity date is June 30, 2000. The notes are subject to redemption prior to maturity at face value on any interest payment date; the estimated total interest cost on an arbitrage basis is 4.17%; and the notes were rated A-1 by Standard and Poor’s. The bond issue was said the gross proceeds are $10,845,000 for Series A bonds; $29,155,000 for Series B bonds; and $39,260,000 for Series C bonds. The bonds sold on June 4, 1998; the combined interest rate was 5.10%, compared to the Bond Buyer Index at 5.13%; the notes were rated Aaa by Moody’s and Standard and Poor’s; and the notes are callable on July 1, 2008, at 101. The bond issue was a negotiated sale with Merrill Lynch as Senior Underwriting Manager; Kutak Rock as bond counsel; Peck, Shaffer & Williams as underwriter’s counsel; and PNC Bank as trustee.

Mr. Howard discussed Kentucky Asset/Liability Commission (KALC) General Fund Tax and Revenue Anticipation Notes, 1998 Series A. The gross proceeds are $201,766,000; the maturity date is June 25, 1999; the notes were priced on June 24 and closed on July 1 with a yield of 3.57%, compared to the Bond Buyer One Year Index of 3.75%. He said the bonds are not subject to redemption prior to maturity and estimated this transaction will provide approximately $3.6 million in revenue from arbitrage earnings. The bond issue was a negotiated sale with Salomon Smith Barney as senior managing underwriter; Peck, Shaffer & Williams as bond counsel; Brown, Todd & Heyburn as underwriter’s counsel; and PNC Bank as trustee.

In response to a question from Chairman Damron, Mr. Howard said once the General Fund Surplus is certified, and the surplus moneys are moved to the capital construction program, it is possible that KALC will issue another series of notes because that may create a need for additional working capital prior to tax receipts.

Chairman Damron asked if KALC can issue notes as soon as the surplus money is certified and moved out. Mr. Howard said they will first need to spend the money they have already borrowed, which they expect to do by August or September, depending on tax receipts and timing of expenditures from the General Fund.

Mr. Howard discussed two follow-up reports for the University of Kentucky (UK). The first bond issue he discussed was UK Consolidated Educational Buildings Revenue Bonds, 1998 Series M. He said the purpose of this issue was to refund original Series M bonds issued for the Animal Diagnostic Laboratory and for the Lexington Community College Building. The bond ratings were A1 by Moody’s and AA- by Standard & Poor’s; the gross proceeds were $4,695,000; the present value savings were $278,309; and the net interest cost was 4.63%.

Mr. Howard said both series sold June 9 and are callable May 1, 2008, at 101%. The bond issue was a competitive sale with Peck, Shaffer & Williams as bond counsel; Seasongood & Mayer as financial advisor; and Bank One as trustee.

Chairman Damron said the follow-up reports do not require any further action from the Committee.

Chairman Damron asked Senator Leeper to take over duties of the Chair for the next two agenda items. Senator Leeper called on Mr. Howard to report on nine new SFCC issues, none which required a tax increase: Campbell Co. - $2,935,000 to complete additions to a high school; Casey Co. - $2,165,000 to complete improvements to a high school; Harlan Ind. (Harlan Co.) - $62,000 to renovate a high school; Harrodsburg Ind. (Mercer Co.) - $415,000 to renovate an elementary school; Mercer Co. - $1,170,000 to renovate an elementary school and $2,310,000 to refund 1991 bonds; Ohio Co. - $1,525,000 to complete improvements to an elementary school; Russell Co. - $262,000 to complete improvements to three elementary schools; and Washington Co. - $5,980,000 to build a new elementary school.

Senator Buford made a motion to approve the school bond issues with SFCC participation in debt service. The motion was seconded by Representative Graham and passed by voice vote. Chairman Damron abstained from the vote, citing a possible conflict of interest.

Senator Leeper said there were six new school district bond issues with locally-funded debt service, none which required a tax increase. Local school bond issues were reported for the following school districts: Elizabethtown Ind. (Hardin Co.) - $215,000 for energy conservation improvements at a high school; Harlan Co. - $2,785,000 to complete renovations to a high school; Jackson Ind. (Breathitt Co.) - $35,000 to purchase land adjacent to a high school; Marion Co. - $795,000 for energy conservation improvements to all district elementary schools and one middle school; Oldham Co. - $2,900,000 for renovations at two high schools and one elementary school; and Russellville Ind. (Logan Co.) - $745,000 to refund 1991 bonds.

Senator Leeper said no action was required on school bond issues that are 100% locally funded.

annual payments of $9,224. As a condition of the loan, sewer user rates will increase by at least 9%, by January 1999, to cover the debt service.

Senator Leeper made a motion to approve the Fund B loan for the city of Hardinsburg. The motion was seconded by Senator Buford and passed by voice vote.

Next, Ms. Eaton-Thomas discussed a Fund C loan (Governmental Agencies Program) request from the city of Louisa. She said the proceeds will be used to purchase and install a sludge belt filter press at the wastewater treatment plant. The loan is for $198,000 with a rate of 6.5% for 20 years, and annual payments of $20,831.

Representative Graham made a motion to approve the Fund C loan for the city of Louisa. The motion was seconded by Senator Buford and passed by voice vote.

Next, Ms. Eaton-Thomas discussed two project amendments. The first amendment was for the city of Campbellsville. She said in May of this year, Union Underwear (Fruit of the Loom) in Campbellsville closed, resulting in a loss of $1,100,000 of annual revenue for the Campbellsville Water and Sewer Department. She said the city currently has three loans with KIA, and the city requested forgiveness for all three loans. She said KIA has approved deferring repayment of principal, interest, and service fees, without interest accrual, for a period of five years on a Fund B loan that would be extended from a term of 20 years to 30 years. KIA also approved extending the term of Campbellsville's Fund C loan from 20 years to 30 years.

Chairman Damron asked if a loan could be forgiven without authorization from the General Assembly. Ms. Eaton-Thomas said she did not know, but she would find out.

Senator Buford made a motion to approve the Funds B and C loan amendments for the city of Campbellsville. The motion was seconded and passed by voice vote.

The next loan amendment Ms. Eaton-Thomas discussed was for the Ledbetter Water District (LWD) in Livingston County. KIA approved this loan for the Ledbetter Sanitation District (LSD) for $2,842,399, and to date, LSD has been unable to pay KIA the full amount they owe because the number of customers and the cost of operating the system was severely underestimated by the engineer. LWD has agreed to assume the make full interest payments and pay administrative fees. Ms. Eaton-Thomas said there were several conditions of this loan, one of them being close monitoring of revenues and expenditures on an annual basis.

Senator Leeper made a motion to approve the Fund A loan amendment for the Ledbetter Water District. The motion was seconded by Senator Buford and passed by voice vote.

Ms. Eaton-Thomas discussed a proposed Fund A loan for the Regional Water Resource Agency of Owensboro/Daviess County. She said Owensboro is working on a regional water project that will cost approximately $27 million. She said Fund A loans are not taken to the Board until project bids are in hand, but in this case, the Regional Water Resource Agency did not want to proceed in the design stage without some assurance from the Board that it would not reject the project solely because of the size of the loan. Ms. Thomas said at its last meeting, the Board agreed there will be no objection to a request for a $27 million loan based solely on size.

In response to a question from Chairman Damron, Ms. Eaton-Thomas said the interest rate would be 3.8%, plus two-tenths of a percentage point as an administrative fee. She said KIA expects to have $59.5 million for Fund A projects, and the total dollar amount required for projects the Board anticipates receiving funding requests, including $27 million for the Owensboro project, is $50.9 million.

In response to a question from Chairman Damron, Ms. Eaton-Thomas said even though the Regional Water Resource Agency could go to the bond market for a loan, they are requesting money from KIA because the interest rate is lower. She said KIA and the Division of Water favors regional approaches like this which will eliminate nine package treatment plants and numerous pump stations.

Chairman Damron said enclosed in members' folders were KIA status reports for Funds A, B, C, and E; a staff update on capital projects; and a Parks Revitalization Bond Implementation Committee Report. Ms. Mary Lynn Collins, Committee Staff Administrator, noted that Murray State University, through an administrative regulation, is seeking approval to manage its own capital construction program, which means the university would bring project modifications directly to the Committee, rather than